Paper No. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte SNAP-ON TECHNOLOGIES, INC.

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Appeal No. 98-1363
Reexamination Control No. 90/004,462[1]

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HEARD: June 10, 1998

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Before McCANDLISH, Senior Administrative Patent Judge, and PATE and NASE, Administrative Patent Judges.

McCANDLISH, Senior Administrative Patent Judge.

**DECISION ON APPEAL**

This is a decision on an appeal from the examiner's final rejection of claims 1 through 8 and 11 through 18 under 35

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[1] Request filed November 19, 1996, for reexamination of U.S. Patent No. 5,570,616, granted November 5, 1996, based on Application 08/546,511, filed October 20, 1995. According to appellant, the application is a continuation of Application 08/388,993, filed February 15, 1995, now abandoned, which is a continuation of Application 08/160,151, filed December 2, 1993, now Patent No. 5,437,212, granted August 1, 1995.

U.S.C. § 103. Claims 9 and 10, the only other claims pending in the application, have been allowed.

The patent under reexamination relates to a ratcheting driver handle having a grippable body (11) and a ratchet mechanism (40) conditioned by a selector member (60) in such a manner that rotation of the body in a given direction will either cause rotation of a driver bit (such as screwdriver bit 70) or will allow the body to ratchet with respect to the driver bit. The ratchet mechanism comprises (a) a ratchet gear (41) having a bore (42) for receiving the shank of the driver bit and (b) at least one pawl (50) which is engageable with the ratchet gear. According to claim 1, the only independent claim on appeal, an actuator pin (65) on the selector member extends parallel to the axis of the body and is positioned and dimensioned for direct engagement with the pawl to disengage the pawl from the ratchet gear by moving the selector member to a certain position.

A copy of the appealed claims is appended to appellant’s brief.

The following references are relied upon by the examiner as evidence of obviousness in support of her rejections under 35 U.S.C. § 103:

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| Froeschl et al. (Froeschl) | 2,201,827 | May 21, 1940 |
| Gantz | 2,627,330 | Feb. 3, 1953 |
| Herman et al. (Herman) | 4,777,852 | Oct. 18, 1988 |

Claims 1 through 8, 11 through 13 and 15 through 18 stand rejected under 35 U.S.C. § 103 as being unpatentable over Herman in view of Gantz, and claim 14 stands rejected under 35 U.S.C.
§ 103 as being unpatentable over Herman in view of Gantz and Froeschl.

The examiner's position regarding claim 1 is as follows:

> Herman et al discloses a ratcheting driver handle including an elongate body, a ratchet mechanism, mounting means, first and second pawls, a selector member, an actuator pin for engagement with an actuator lever which extends between the pawls for selective engagement thereof, and a bias mechanism. Herman et al discloses [sic, disclose] all of the claimed subject

> matter except for having an actuator pin on the selector member ?positioned and dimensioned for direct engagement with said at least one pawl?. The actuator pin ?95? of Herman et al engages an actuator lever ?80? which in turn directly engages the pawls ?70? and ?75?. Gantz discloses pins/lugs ?41? on an selector member which is positioned and dimensioned for direct engagement with at least one pawl to control the direction of rotation of the ratchet mechanism. The pins/lugs ?41? of Gantz lie along an axis of the handle and extend between the pawls. It would have been obvious to one having ordinary skill in the art to form the actuator pin of Herman et al such that it is positioned and dimensioned for direct engagement with at least one pawl to control the direction of rotation of the ratchet mechanism and for durability and economy as taught by Gantz. [Answer, pages 3-4].

In support of patentability, appellant contends, in general, that the combined teachings of the applied references would not have suggested the claimed invention. Appellant additionally relies on the Olson declaration filed under 37 CFR § 1.132 on July 30, 1997 along with amendment A (Paper No. 10).

We have carefully considered the issues raised in this

appeal together with the examiner's remarks and appellant's arguments. As a result, we conclude that the rejection of the appealed claims cannot be sustained.

As noted supra, the examiner acknowledges that Herman does not disclose the concept of positioning and dimensioning an actuator pin on a ratchet selector member for direct engagement with the ratchet pawl as recited in claim 1. Instead, the cylindrical member 95 ( described as a ?pin? in the Herman specification) on the selector cap 90 engages an L-shaped actuator 80 which, in turn, engages a selected pawl to disengage the pawl from the ratchet gear 60.

The Gantz patent, on the other hand, teaches the concept of directly engaging ratchet pawls with members 41 on an end wall of a ratchet selector collar 35. The Gantz specification, however, describes members 41 as ?arcuately shaped lugs? (specification, column 3, line 15). Thus, if anything, Gantz suggests the substitution of a motion-transmitting ?lug? for the motion-transmitting assembly of Herman's ?pin? 95 and actuator 80.

In support of her position, the examiner characterizes Gantz's members 41 as ?pins/lugs? (answer, page 3). In his declaration, Mr. Olson[2] refutes the examiner's characterization of Gantz's members 41 as being pins. In this regard, the declarant states in paragraph 11 of the declaration that according to its applicable common ordinary meaning in Webster's Third New International dictionary (1981), a pin is ?a usu. cylindrical piece of wood, metal or other material? and is ?a slender post or peg . . .? On pages 3 and 4 of the declaration, declarant further states in pertinent part:

> The definition lists ?peg? and ?bolt? as synonymous cross references, both of which are also defined as being ?a cylinder? or ?usu. cylindrical? members (definitions attached as Exhibits 3 and 4). This common and ordinary meaning is the sense in which the word ?pin? is used in both the '616 patent and in Herman et al. Gantz, on the other hand, characterizes his members 41, not as pins, but rather as ?lugs.? They are

[2] The declarant qualifies as a person skilled in the art to which appellant's invention pertains inasmuch as he received a Bachelor of Science degree in mechanical engineering and worked as an engineering consultant for over 35 years with experience in the hand and power tool art. The examiner has not challenged the declarant's qualifications.

> not cylindrical, but rather have an elongated, ?arcuately shaped?, transverse cross section.
>
> 12. This elongated, transverse cross-sectional shape of the Gantz lugs 41 is important to the functioning of the Gantz mechanism. The long outer surfaces of the lugs 41 are toothed or ribbed, as at 42, for cooperation with teeth or ribs 32 on the dogs 27, 29 ?to prevent accidental disengagement of the lugs and the dogs? (column 3, lines 20-22). This function could not be attained, and the Gantz dogs 27, 29 could not be retained in positions disengaged from the ratchet gear 23, if the ribbed lugs 41 were replaced with pins.
>
> 13. Thus, while Gantz does teach the concept of an axial member interposed between two pawls for movement into direct engagement therewith, it does not suggest that this member should be a pin. Characterization of the Gantz lug 41 as a pin relies on an uncommon and extraordinary meaning; one not used by a person of ordinary skill in the art. Indeed, if anything, Gantz teaches away from the use of a pin.

The Olson declaration is therefore evidence that Gantz's lug 41 is not a pin in its common ordinary sense, inasmuch as

the patentee's lug lacks the characteristics of a pin as quoted supra. This evidence shows that one skilled in the art would not regard Gantz's lug 41 as being a pin.

It is not enough to dismiss the evidence in the Olson declaration as being ?mere opinion? (answer, page 6) as the examiner has done here. Instead, the examiner is under a burden to come forward with evidence challenging the Olson declaration. See In re De Blauwe, 736 F.2d 699, 706, 222 USPQ 191, 197 (Fed. Cir. 1984) and In re Katzschmann, 347 F.2d 620, 622, 146 USPQ 66, 68 (CCPA 1965). Since the examiner has failed to do so, the Olson declaration stands unrebuted in the record before us.

Thus, on the present record, neither the Herman patent nor the Gantz patent teaches appellant's claimed feature of an actuator pin disposed on a ratchet selector member and positioned and dimensioned for direct engagement with the ratchet pawl. As a consequence, even if the teachings of Herman and Gantz were combined to incorporate Gantz's lug 41 into Herman's mechanism, the result would not arrive at

appellant’s claimed invention.

Accordingly, the examiner’s decision rejecting appealed claims 1 through 8 and 11 through 18 is reversed.

**REVERSED**

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| HARRISON E. McCANDLISH, Senior<br>Administrative Patent Judge | ) |
| WILLIAM F. PATE, III<br>Administrative Patent Judge | ) BOARD OF PATENT<br>) APPEALS AND<br>) INTERFERENCES |
| JEFFREY V. NASE<br>Administrative Patent Judge | ) |

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